

EXHIBIT 2

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

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)
THE STATE OF TEXAS,) Case No. 4:20-cv-00957
et al.,)
)
Plaintiffs,)
)
v.)
)
GOOGLE, LLC,)
)
Defendant.)
-----x

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF ITAMAR SIMONSON, PhD
SAN FRANCISCO, CALIFORNIA
TUESDAY, OCTOBER 29, 2024
9:10 A.M.

Job No. MDLG6920396
Reported by: Leslie A. Todd, CSR No. 5129 and RPR

1 THE WITNESS: Not that I recall.

2 MR. ROBINSON: I'm going to move
3 to tab 5.

4 (Exhibit No. 5 was marked for
5 identification.)

6 BY MR. ROBINSON:

7 Q. Which will be Exhibit 5. And,
8 Dr. Simonson, do you have Exhibit 5 in front of
9 you?

10 A. I do.

11 Q. And do you recognize this document?

12 A. Yes.

13 Q. And what is this document?

14 A. It appears to be a list of topics
15 that I was going to perhaps include in a number
16 of interviews that were conducted well before the
17 questionnaire was developed. And so it was
18 different topics that could have been discussed
19 in those unstructured qualitative interviews.

20 Q. And so Exhibit 5 is Appendix D to
21 your July 30th, 2024 report, right?

22 A. It appears to be, yes.

23 Q. And it's titled Preliminary
24 Interview Guide, right?

1 A. Right.

2 Q. And this was produced on the same
3 day of your July 30th, 2024 report, right?

4 A. Right.

5 Q. Did you write Exhibit 5?

6 A. I did not write it, but it was kind
7 of a bunch of qualitative, unstructured questions
8 that I and people at Analysis Group came up with.

9 Q. So if you did not write Appendix D,
10 Analysis Group wrote this Preliminary Interview
11 Guide, then, right?

12 A. As I said --

13 MS. KAPLIN: Object to form.

14 THE WITNESS: As I said, it was
15 a bunch of topics or questions that I
16 and a team at Analysis Group came up
17 with, knowing that some of them will
18 actually be mentioned to the few
19 respondents who participated, and others
20 would not. And some questions that were
21 not listed would have been asked.

22 BY MR. ROBINSON:

23 Q. Anyone outside of -- besides you or
24 Analysis Group that helped write these -- this

1 Preliminary Interview Guide?

2 A. No.

3 Q. So I'm trying to understand the
4 specific drafting process here for this
5 Preliminary Interview Guide. And you testified
6 just now that "I and a team at Analysis Group
7 came up with," referring to Appendix D.

8 And -- so did Analysis Group write
9 this, and then you -- and then you reviewed it
10 to -- did you review it after they --

11 MS. KAPLIN: Object to form.

12 THE WITNESS: No, we probably
13 had a Zoom meeting, and just wanted to
14 come up with a bunch of topics, knowing
15 the limited purpose of those interviews,
16 primarily to vet the type of respondents
17 that we may end up interviewing if we
18 proceed with working with Advertiser
19 Perceptions.

20 So that was the main purpose.
21 The questions that appeared here were
22 not designed to be part of any actual
23 interviews. It was primarily to vet the
24 kind of respondents that we may end up

1 interviewing, assuming we conduct the
2 survey with Advertiser Perceptions.

3 BY MR. ROBINSON:

4 Q. So these questions were never asked
5 to anybody, though -- let me rephrase.

6 These questions were never used in
7 an interview?

8 A. No, I'm -- I think maybe I wasn't
9 clear. Some of these questions were asked of
10 some of the respondents, probably not word for
11 word, but some of them were asked of some of the
12 respondents. And depending on how that
13 conversation evolved, other questions were asked
14 that do not appear here.

15 Q. And so you testified that you had
16 a -- "We probably had a Zoom meeting; just wanted
17 to come up with a bunch of topics."

18 So I'm trying to -- I'm trying to
19 understand that. You had a video call with
20 Analysis Group, where topics for the Preliminary
21 Guide were talked about. And then Analysis Group
22 took that and turned those list of topics into
23 Appendix D, right?

24 A. I don't recall precisely. It was a

1 year and a half ago, I think in April of 2023.
2 So I don't recall exactly, but I think what you
3 just described, it's possible that that's the way
4 it went.

5 Q. When you referred earlier to -- you
6 testified that "Some of these questions were
7 asked of some of the respondents, probably not
8 word for word, but some of them were asked of
9 some of the respondents."

10 Who were these respondents?

11 A. Could you repeat it? Who --

12 Q. Yeah, who were the respondents that
13 were being asked the questions in Appendix D?

14 A. In total, there were 14
15 respondents, whose names were provided -- or
16 contact information were provided by AP.

17 Q. And do you know the names of those
18 14 respondents?

19 A. I do not.

20 Q. So is Exhibit 5 a true and correct
21 copy of the Preliminary Interview Guide?

22 A. As I said, that -- that's what was
23 submitted, but as I explained, different
24 respondents were asked different questions. So

1 this was just a list that -- a preliminary list
2 that we came up with, but different respondents
3 were asked different questions.

4 Q. But you have no reason to believe
5 that Exhibit 5 is an inaccurate copy of Appendix
6 D from your report, right?

7 A. It is from my report, but I'm -- I
8 know how the process went. I listened to every
9 single one of those 14 interviews. And I know
10 that some respondents were asked some of the
11 questions, others were asked completely different
12 questions that were not on this list.

13 Q. So can you provide me the list of
14 the -- of all the questions that were actually
15 asked to respondents?

16 A. No.

17 Q. And why is that?

18 A. Well, I don't -- I didn't take
19 notes. There was no need to take notes, given
20 the primary purpose of those preliminary
21 interviews. And I think that's actually normal
22 practice.

23 Q. So in light of that, Appendix D is
24 actually an incomplete Preliminary Interview

1 Guide, because it doesn't show what was actually
2 asked of respondents, right?

3 MS. KAPLIN: Object to form.

4 THE WITNESS: I wouldn't call it
5 inaccurate. I'd say for its purpose, it
6 was accurate. That was the initial
7 questions that were on that list.

8 BY MR. ROBINSON:

9 Q. But you'd agree with me that it's
10 incomplete, in the sense that it's missing those
11 questions that were actually asked to
12 respondents, right?

13 MS. KAPLIN: Object to form.

14 THE WITNESS: In many cases,
15 that is correct. But there was no need
16 to -- given that I did not rely, or did
17 not intend to rely on answers to any of
18 these questions, there was no need to
19 update that qualitative conversational
20 list.

21 And that's not -- that's not a
22 general practice. In fact, you can --
23 it seems that your expert was a big --
24 called Dr. Diamond is the authority.

1 And if you look at her chapter that's
2 often cited from 2011, that's
3 specifically what she says, that,
4 typically -- she even talks about
5 pretests. Typically, they're not
6 disclosed.

7 MR. ROBINSON: Objection as
8 nonresponsive after "In many cases, that
9 is correct."

10 BY MR. ROBINSON:

11 Q. Was it your decision to not retain
12 that complete list of questions that were asked
13 to respondents in the preliminary interview?

14 A. As I said, there was nothing to
15 retain. It was not recorded. I didn't have any
16 record of it. That was not the purpose of those
17 interviews. It was primarily to vet the members
18 that -- or respondents that can be provided by
19 AP.

20 MR. ROBINSON: Objection,
21 nonresponsive.

22 BY MR. ROBINSON:

23 Q. Was it your decision to not have
24 notes? Was that your decision to not have notes?

1 A. No, it never came up. No decision
2 was made about taking notes or not taking notes.
3 It was just, let's have a conversation with the
4 kind of respondents that may be provided by AP.

5 Q. Did Analysis Group keep any notes
6 of the preliminary interviews?

7 A. Not to my knowledge.

8 Q. Was that your decision?

9 A. No, there was no decision. I think
10 you're -- how should I say, you're assuming that
11 there was a decision. Okay, let's keep notes,
12 let's not keep notes. That never came up.

13 Given the specific purpose of the
14 survey, to learn about potential respondents
15 that -- and to see whether they're even
16 knowledgeable about advertising as practiced by
17 their organizations. There was no issue of
18 retaining notes regarding questions that I was
19 not going to ask.

20 Q. Would you say that Analysis Group
21 is under your control about -- the staff that
22 helped you, were they under your control?

23 A. Yes, to a significant degree.

24 Q. And no one at Analysis Group asked

1 I just gave you one example from the
2 likelihood of confusion survey, an area
3 in which I published a chapter about
4 what I call demand effects in likelihood
5 of confusion surveys.

6 So I think I know quite a bit.
7 Does it mean that I can always detect
8 biases? Probably not.

9 BY MR. ROBINSON:

10 Q. Would you agree with me that survey
11 questions should be clear and unambiguous?

12 A. I think the answer is generally,
13 yes.

14 Q. And survey respondents should
15 understand the survey's concepts the same way,
16 right?

17 A. Not necessarily. It -- it really
18 depends. I mean, again, here you do have some
19 principles? I'm happy to explain that to you, if
20 you want me to elaborate.

21 Q. But you would agree that -- that
22 survey questions should be interpreted
23 consistently so -- to improve comparability,
24 right?

1 A. It really depends on the context.
2 I think what you want to do is to ask meaningful
3 questions that respondents could interpret for
4 themselves, and answer accordingly.

5 If you want a precise number, like
6 elasticity, which I didn't look for in this
7 survey, there it's a different matter. You may
8 need to have some specific quantities and hope
9 that respondents can give meaningful answers.

10 But in many cases, it's best to use
11 qualitative, relative terms, and let respondents
12 interpret them as they naturally do, based on
13 their experience. As long as you're using plain
14 English terms, as opposed to inventing terms that
15 respondents are unfamiliar with.

16 Q. So it's totally fine in a survey
17 for survey respondents to interpret survey
18 questions completely differently, then?

19 A. No, that misrepresents what --

20 Q. So they should be -- they should be
21 interpreted consistently, then, right?

22 A. The words "should be interpreted
23 consistently" -- for example, if you see the word
24 small, if some people think about small as big,

1 that's a problem. But if everyone knows what the
2 word "small" or what the word "significant"
3 means, then that would be fine, as long as you're
4 not trying to estimate a precise number, such as
5 elasticity.

6 Q. So it sounds like it's an
7 assumption you're making that respondents --
8 survey respondents are going to interpret certain
9 words the same way, then, in that case, right?

10 MS. KAPLIN: Object to form.

11 THE WITNESS: Yes. In fact, I
12 published an article back in 2008 in the
13 Journal of Consumer Psychology, in which
14 I presented the following conclusion:
15 That respondents have difficulty
16 evaluating in questions absolute values.
17 And absolute values would be something
18 like, let's say, plus 8 percent, or
19 \$179. These are absolute numbers.

20 And I said, they have trouble
21 with that. And that difficulty, I
22 called it absolute value challenged.
23 That generates systematic errors and
24 biases that many people, based on my

1 meta-analysis and literature review,
2 many people interpreted as showing that
3 people are irrational.

4 And I said, when people are
5 absolute value challenged, it's much
6 better to use qualitative, relative
7 terms. And then you get much more
8 meaningful answers.

9 Q. In some cases, is an unbiased
10 survey impossible, given constraints on sample
11 size?

12 A. Is an unbiased survey impossible
13 because --

14 Q. Based on constraints on the sample
15 size?

16 A. It's possible. I gave you earlier
17 this over \$1,000 cigars. And if you could find
18 only 20 respondents like that, or 15, that's --
19 that's not enough to draw any statistically
20 meaningful conclusions.

21 Q. So you would prefer in a survey --
22 in a survey to give terms that may be subject to
23 different interpretations, rather than give an
24 absolute value in a question, right?

1 MS. KAPLIN: Object to form.

2 BY MR. ROBINSON:

3 Q. That was a yes, right?

4 A. Yes.

5 Q. And your survey did not define the
6 small but significant amount in question 5,
7 right?

8 A. I thought -- I think we already had
9 that discussion. But it specifically did not
10 define it because these are familiar words, and I
11 wanted respondents to interpret the question
12 meaningfully based on their familiarity with
13 those plain language words.

14 Q. Is there a numerical definition
15 that you would use to describe this increase in
16 budget?

17 MS. KAPLIN: Object to form.

18 THE WITNESS: Increase in what?

19 BY MR. ROBINSON:

20 Q. Increase in budget. Is there a
21 numerical definition that you would give to small
22 but significant amount?

23 MS. KAPLIN: Object to form.

24 THE WITNESS: Did you say budget

1 or amount?

2 BY MR. ROBINSON:

3 Q. Amount increase in budget.

4 MS. KAPLIN: Object to form.

5 BY MR. ROBINSON:

6 Q. Is there an absolute value that you
7 would place on a small but significant amount?

8 A. Where do you see amount of
9 budget -- where are you reading from?

10 Q. So question 5 says,
11 "Programmatic" -- "The cost of programmatic
12 display advertising has recently increased by a
13 small but significant amount." Now --

14 A. Where is the word "budget" that you
15 just mentioned?

16 Q. Well, forget the word "budget."
17 What absolute numerical value would you give to a
18 small but significant amount?

19 MS. KAPLIN: Object to form.

20 THE WITNESS: I would not give
21 any specific number. And based on what
22 I've taught my students for many years,
23 and research that I've done, respondents
24 would not convert it to a number. And

1 maybe that's something that maybe --
2 that will be difficult for
3 Dr. Mathiowetz, who, as I understand
4 from her area of expertise, she's not an
5 expert on judgment and choice.

6 She -- she may think, and you
7 may think, that people go through this
8 extra step of converting small but
9 significant to a number, and then going
10 on to speculate about their response
11 based on this hypothetical number.

12 MR. ROBINSON: Objection.

13 Nonresponsive.

14 Q. So --

15 A. Just to complete my answer.

16 Based on what we know about how
17 consumers answer questions, they are referred to
18 as cognitive misers. They look for shortcuts.
19 They would not speculate about a number, and then
20 continue to answer questions based on some
21 speculated random number they came up with. They
22 will just use their familiarity with the words
23 small but significant.

24 MR. ROBINSON: Objection.

1 Nonresponsive.

2 Q. So the purpose of the undefined
3 term here was to have people interpret the
4 question in different ways?

5 MS. KAPLIN: Object to form.

6 THE WITNESS: Nope. To --
7 whatever small but significant means to
8 them. That was not meant to be
9 interpreted in any absolute number
10 terms.

11 BY MR. ROBINSON:

12 Q. So it's open to people's different
13 interpretation of small but significant, right?

14 MS. KAPLIN: Object to form.

15 THE WITNESS: They have their
16 understanding of small, it's not large,
17 but significant as opposed to something
18 you would completely ignore. That's it.
19 These are familiar words. It's a
20 balanced term. They would not convert
21 it to this number or that number. They
22 have no basis, and it will be the
23 opposite of a shortcut.

24 BY MR. ROBINSON:

1 Q. Okay. So I -- I don't understand.
2 Is it -- it's not an absolute amount, so there's
3 not some set term. But it's also not open for
4 interpretation. Is that your testimony?

5 A. Yeah, it is open to -- it's not an
6 issue of interpretation. The way they -- the
7 meaning to them of small but significant, that's
8 all they need to do. They're familiar with those
9 words, and that's how they should think about it.
10 And as I said earlier, respondents are good at
11 that. Even if they don't have specific numbers;
12 whereas, if I gave them an absolute number,
13 8 percent, 15 percent, 2 percent, that's where
14 they would have trouble giving meaningful
15 answers.

16 Q. Could a respondent convert small
17 but significant to an actual number?

18 A. As I said, based on what we know
19 about people's judgment and decisionmaking, they
20 would not.

21 Q. So it's not possible?

22 MS. KAPLIN: Object to form.

23 THE WITNESS: Anything is
24 possible. It's highly unlikely, based

1 on a great deal of work, including work
2 that gave some people like Herbert Simon
3 back in 1979, I think, and Daniel
4 Kahneman in 2002 -- gave them -- led
5 them to receiving the Nobel Prize in
6 economics.

7 BY MR. ROBINSON:

8 Q. So some respondents could take
9 small but significant to mean a 5 percent
10 increase, right?

11 MS. KAPLIN: Object to form.

12 BY MR. ROBINSON:

13 Q. That's possible, right?

14 MS. KAPLIN: Object to form.

15 THE WITNESS: As I said, I'm not
16 going to argue with -- anything is
17 possible, highly unlikely, and that's
18 how you design questions based on your
19 expertise and knowledge of what's highly
20 likely.

21 Does that apply to a hundred
22 percent of the respondents? Probably
23 not.

24 BY MR. ROBINSON:

1 Q. And some survey respondents could
2 take a small but significant increase in price to
3 mean 15 percent, right? It's possible?

4 MS. KAPLIN: Object to form.

5 THE WITNESS: I don't know what you
6 mean by possible. I have no reason whatsoever to
7 believe that anyone would. If you say, is it
8 possible? yeah, anything is possible.

9 BY MR. ROBINSON:

10 Q. And some respondents could take a
11 small but significant increase in price to mean
12 25 percent, right? It's possible?

13 MS. KAPLIN: Object to form.

14 THE WITNESS: Extremely
15 unlikely.

16 BY MR. ROBINSON:

17 Q. But you don't know for certain,
18 though, right?

19 A. I do know, because I'm an expert in
20 asking questions and understanding the manner in
21 which respondents answer such questions.

22 Q. And you asked respondents after the
23 survey what they took small but significant
24 amount to mean?

ERRATA SHEET FOR THE TRANSCRIPT OF ITAMAR SIMONSON

Case Name: State of Texas et al., v. Google LLC

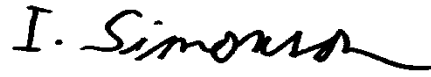
Dep. Date: October 29, 2024

Deponent: Itamar Simonson

Page	Line	Corrections	Reason for Correction
25	48	Analysis Group → Advertiser Perceptions	Correction
39	7	No, I think they are closely → No , I think they are closely	Transcription error
48	6	may pertains → may pertains s	Transcription error
77	23	Probably. I – I mean, it was a → Probably. I, you know , it was a	Transcription error
78	23	a potential → a tangent	Transcription error
83	18	asked now, I kind of → asked now, I kind of	Transcription error
126	24	is the authority → as the authority	Transcription error
140	19	This one? → This one	Transcription error
160	1	wanted to → want	Transcription error
161	2	board → Bortz	Transcription error
162	16	judge's → judges'	Transcription error
172	19	principles? → principles.	Transcription error
185	14	has not shown → has not been shown	Transcription error
189	4	the preliminary interviews that were done early → the preliminary interviews that were done early	Transcription error
192	8	that Dr. Mathiowetz → that when Dr. Mathiowetz	Transcription error
193	20-21	I'm not an expert → I'm not an expert in the QUAID tool	Clarification
240	9	I've have → I have	Transcription error
242	8	just when → just as when	Transcription error
272	11	is → in	Transcription error
284	14-15	wide range of many digital advertising types. → wide range of many digital advertising types.	Transcription error
284	21	the most → they -- most	Transcription error

I have inspected and read my deposition and have listed all changes and corrections above, along with my reasons therefore.

Date: November 25, 2024

A handwritten signature in black ink, appearing to read "I. Simonson", written over a horizontal line.

Itamar Simonson, Ph.D.